PATENT
Attorney Docket No. 05725.1239-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Xavier BLIN et al.	)	Group Art Unit: 1618
	)	
Application No.: 10/656,146	)	Examiner: J. ROGERS
	)	
Filed: September 8, 2003	)	
	)	
For: COSMETIC COMPOSITION COMPRISING A HYDROCARBON OIL AND A SILICONE OIL	)	Confirmation No.: 1368

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

I, FERRARI Véronique do hereby make the following declaration:

1. I am a French citizen, residing at Maisons-Alfort, 12 rue St Georges.

2. I have been awarded a PHD from PARIS VI in Polymer Physico-Chemistry

3. I have been employed by L'ORÉAL since 1990 and I am presently Manager of Lipstick development laboratory

4. During my employment at L'ORÉAL, I have been engaged in research and development regarding cosmetic products.

5. Given my education and experience, particularly in the area of Physico-Chemistry, I consider myself able to provide the following testimony based on experiments conducted by me or under my supervision.

COMPARATIVE EXPERIMENTS

SERIES 1

A. PREPARATION OF THE COMPOSITIONS

6. Five lipstick compositions were prepared as described below.

7. Compositions 1-3 were prepared according to the invention. Composition 4 is Example 4 from the specification, and was thus also prepared according to the invention. Composition 5, a comparative composition, did not contain any of the claimed non-volatile ester oils having a molecular mass of more than 500 g/mol, but instead was prepared with isononyl isononanoate. The ingredients are set forth in Table 1 below.

Table 1

Phase	COMPOUNDS	Composition 5 (Comparative)	Composition 4 Example 4 from specification (Inventive)	Composition 1 (Inventive)	Composition 2 (Inventive)	Composition 3 (Inventive)
A	**Isononyl isononanoate**	30.00				
	Di-isostearyl malate		30.00			
	Pentaerythrityl tetraisostearate			30.00		
	Tridecyl trimellitate				30.00	
	Triisocethyl citrate					30.00
	Phenyltrimethyltrisiloxane 20cst (DC-556 from Dow Corning)	18.00	18.00	18.00	18.00	18.00
	Phenyltrimethyltrisiloxane 1000cst (Belsil 1000 pdm from Wacker)	25.19	25.19	25.19	25.19	25.19
B	Microcristalline Wax (Microwax HW from Paramelt)	10.00	10.00	10.00	10.00	10.00

	Alkyl dimethicone C30-C45 (SF 1642 from Momentive performance materials)	2.50	2.50	2.50	2.50	2.50
	Mixture of triglycerides of lauric, myristic, palmitic and stearic acids (50/20/10/10) manufactured or sold as Softisan 100 by Sasol	10.00	10.00	10.00	10.00	10.00
C	Red 7	0.26	0.26	0.26	0.26	0.26
	Red 21	0.06	0.06	0.06	0.06	0.06
	Black iron oxyde	0.09	0.09	0.09	0.09	0.09
	Brown iron oxyde	2.10	2.10	2.10	2.10	2.10
	Mica and titanium dioxide	1.80	1.80	1.80	1.80	1.80
	TOTAL	100.00	100.00	100.00	100.00	100.00

8. The pigments of Phase C were ground in the oil of Phase A. The ground product was then mixed with Phase B and with the remaining compounds of Phase A. The mixture was heated in a jacketed pot for at least 30 minutes after the waxes had totally melted.

9. The resultant paste was cast in a mould appropriate for sticks, which was heated at 40-42°C and then held at -18°C for half an hour. The 12.7 mm sticks were then demoulded.

B. MEASUREMENT OF HARDNESS

10. A sample of the composition was poured hot into a lipstick mould of 12.7 mm in diameter.

11. The mould was then cooled in the freezer for about one hour.

12. The stick of lipstick was then stored at 20°C.

13. The hardness of the samples was measured after standing for 24 hours.

14. The hardness of the samples, expressed in grams, was measured on a DFGS2 dynamometer, marketed by Indelco-Chatillon, using the so-called "butter-cutting wire" method.

15. The measured hardness corresponds to the maximal shear force exerted by a rigid tungsten wire of diameter 250 µm, advancing at a speed of 100 mm/min. The results are set forth in Table 2 below.

Table 2

	Composition 5 (Comparative)	Composition 4 (Inventive)	Composition 1 (Inventive)	Composition 2 (Inventive)	Composition 3 (Inventive)
HARDNESS	38g	98g	113g	101g	64g

C. **COSMETIC EVALUATION**

16. The 5 lipsticks were evaluated as described in the patent application by 5 qualified persons according to various criteria. The resultant evaluations are set forth in Table 3 below.

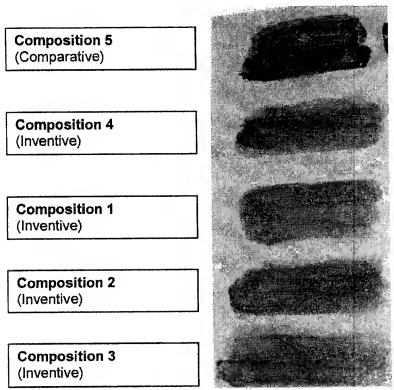
Table 3

	Evaluation
Composition 5 (Comparative)	The stick was not hard enough and was crushed when applied on the lips. The make-up results on the lips were very heterogeneous as can be seen below.
Composition 4 (Inventive)	The texture was light and smooth. When applied on the lips, the deposit was homogenous, half covering and glossy
Composition 1 (Inventive)	The texture was light and smooth. When applied on the lips, the deposit was homogenous, half covering and glossy
Composition 2 (Inventive)	The texture was light and smooth. When applied on the lips, the deposit was homogenous, half covering and glossy
Composition 3 (Inventive)	The texture was light and smooth. When applied on the lips, the deposit was homogenous, half covering and glossy

17. The stick of comparative composition 5 was judged to have poor deposition properties owing to an excessively soft consistency.

18. The sticks of compositions 1-4, all according to the invention, were judged to deposit well. The film of compositions were judged to be homogeneous and glossy. See Photo 1 below.

Photo 1



19. The observed differences in stick deposition and film properties demonstrate unpredictability in the art based upon the differences in the above compositions.

SERIES 2

A. PREPARATION OF THE COMPOSITIONS

20. Three lipstick compositions were prepared as described below.

21. Composition 4 is Example 4 from the specification, and thus was prepared according to the invention. Composition 6 was also prepared according to the invention, and contained phenyl trimethylsiloxy siloxane (silcare silicone 15M30 phenyl trimethicone (viscosity 500 cSt) as the at least on high viscosity phenylsilicone oil. Comparative composition 7, was prepared with phenyl trimethylsiloxy siloxane (silcare silicone 15M30 phenyl trimethicone (viscosity 500 cSt) as well, but it did not contain any of the claimed non-volatile ester oils having a molecular mass of more than 500 g/mol, and instead was prepared with isononyl isononanoate. The ingredients are set forth in Table 4 below.

Table 4

Phase	COMPOUNDS	Composition 4 Example 4 from specification (Inventive)	Composition 6 (Inventive)	Composition 7 (Comparative)
A	Isononyl isononanoate			30.00
	Di-isostearyl malate	30.00	30.00	
	Phenyltrimethyltrisiloxa	18.00	18.00	18.00

	ne 20cst (DC-556 from Dow Corning)			
	Phenyltrimethyltrisiloxane 1000cst (Belsil 1000 pdm from Wacker)	25.19		
	Phenyl trimethylsiloxy siloxane(silcare silicone 15M30 phenyl trimethicone (viscosity 500 cSt) from Clariant		25.19	25.19
B	Microcristalline Wax (Microwax HW from Paramelt)	10.00	10.00	10.00
	Alkyl dimethicone C30-C45 (SF 1642 from Momentive performance materials)	2.50	2.50	2.50
	Mixture of triglycerides of lauric, myristic, palmitic and stearic acids (50/20/10/10) manufactured or sold as Softisan 100 by Sasol	10.00	10.00	10.00
C	Red 7	0.26	0.26	0.26
	Red 21	0.06	0.06	0.06
	Black iron oxyde	0.09	0.09	0.09
	Brown iron oxyde	2.10	2.10	2.10
	Mica and titanium dioxide	1.80	1.80	1.80
	TOTAL	100.00	100.00	100.00

22. The pigments of Phase C were ground in the oil of Phase A. The ground product was then mixed with Phase B and with the remaining compounds of Phase A. The mixture was heated in a jacketed pot for at least 30 minutes after the waxes had totally melted.

23. The resultant paste was cast in a mould appropriate for sticks, which was heated at 40-42°C and then held at -18°C for half an hour. The 12.7 mm sticks were then demoulded.

B. MEASUREMENT OF HARDNESS

24. The measurement was performed according to the following protocol:

25. A sample of the composition was poured hot into a lipstick mould of 12.7 mm in diameter.

26. The mould was then cooled in the freezer for about one hour.

27. The stick of lipstick was then stored at 20°C.

28. The hardness of the samples was measured after standing for 24 hours.

29. The hardness of the samples, expressed in grams, was measured on a DFGS2 dynamometer, marketed by Indelco-Chatillon, using the so-called "butter-cutting wire" method.

30. The measured hardness corresponds to the maximal shear force exerted by a rigid tungsten wire of diameter 250 µm, advancing at a speed of 100 mm/min. The results are set forth in Table 5 below.

Table 5

	Composition 4 (Inventive)	**Composition 6** (Inventive)	**Composition 7** (Comparative)
HARDNESS	98g	69g	24g

C. COSMETIC EVALUATION

31. The 3 lipsticks were evaluated as described in the patent application by 5 qualified persons according to various criteria. The resultant evaluations are set forth in Table 6 below.

Table 6

	Evaluation
Composition 7 (Comparative)	The stick was not hard enough and was crushed when applied on the lips. The make-up results on the lips are very heterogeneous as can be seen below.
Composition 4 (Inventive)	The texture was light and smooth. When applied on the lips, the deposit was homogenous, half covering and glossy
Composition 6 (Inventive)	The texture was light and smooth. When applied on the lips, the deposit was homogenous, half covering and glossy

32. The stick of comparative composition 7 was judged to have poor deposition properties owing to an excessively soft consistency.

33. The sticks of compositions 4 (see Series 1 above) and 6 according to the invention were judged to deposit well and the film of composition was judged to be homogeneous and glossy. See Photo 2 below.

Photo 2

Composition 7
(Comparative)

Composition 6
(Inventive)

34. The observed differences in stick deposition and film properties demonstrate unpredictability in the art based upon the differences in the above compositions.

35. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 20 October 2009 By: Véronique FERRARI